

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

MICHAEL HARRINGTON,)
)
Plaintiff,)
)
v.) **CAUSE NO. 1:14-cv-1632**
)
FRALEY & SCHILLING, INC.,)
)
Defendant.)

NOTICE OF REMOVAL

COMES NOW Defendant, Fraley & Schilling, Inc., by counsel, pursuant to 28 U.S.C. § 1446, and hereby files its Notice of Removal of the above-entitled cause from the Rush Circuit Court, State of Indiana, in which this action was filed and where it is now pending, to this Court.

In support of its Notice, Defendant states as follows:

1. On or about September 17, 2014, Michael Harrington ("Plaintiff") commenced the above-entitled civil action by filing a Complaint in the Rush Circuit Court, State of Indiana, entitled *Michael Harrington v. Fraley & Schilling, Inc.*, Cause No. 70C01-1409-PL-314 (hereinafter referred to as "the State Court Action"). A copy of said Complaint is attached hereto as part of Attachment 1.¹

2. The State Court Action was served upon Defendant, Fraley & Schilling, Inc., by certified mail no earlier than September 18, 2014. This was the first receipt by Defendant, through service or otherwise, of a copy of the pleading setting forth the claims for relief upon which such action is based.

¹ The state court pleadings indicate that the Complaint was filed in the Rush Superior Court, but the Clerk's office informed counsel for Defendant that the State Court Action is pending in the Rush Circuit Court.

3. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 (which gives the United States District Courts original jurisdiction over actions arising under the Constitution, laws and treaties of the United States) and this action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441 without regard to the citizenship or residence of the parties. Plaintiff's Complaint asserts two claims against Defendant arising out of the termination of Plaintiff's employment by Defendant in 2012 -- Plaintiff alleges (i) that he was wrongfully terminated by Defendant "for being injured and expressing his intent to collect worker's compensation benefits; . . .," and (ii) that Defendant failed to notify him of his right to continue his health insurance coverage as required by the Consolidated Omnibus Budget Reconciliation Act of 1985, 29 U.S.C. § 1161 *et seq.* ("COBRA"). Complaint, ¶¶ 7, 11. Plaintiff's claim for alleged violation of his COBRA rights is brought pursuant to § 502(c) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(c). Complaint, ¶ 11. 28 U.S.C. §§ 1331 and 1441 permit removal of any cause of action filed in state court which arises "under the Constitution, laws, or treaties of the United States." Plaintiff's Complaint, therefore, arises under federal law, this Court has original jurisdiction of this action, and this action is removable pursuant to 28 U.S.C. § 1441. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 63-64, 107 S.Ct. 1542 (1980). This Court has supplemental jurisdiction over Plaintiff's wrongful termination claim pursuant to 28 U.S.C. § 1337.

4. Defendant's Notice of Removal is timely filed within thirty (30) days after receipt by Defendant of a copy of the initial pleading setting forth the claim for relief pursuant to 28 U.S.C. § 1446(b).

5. The only process, pleadings, or orders served or filed in the State Court Action are the following: Summons to Fraley & Schilling, Inc., Complaint, Appearance of David M. Lutz,

and Appearance of Byron L. Myers, copies of which are attached hereto and marked Attachment

1. The Civil Cover Sheet is attached hereto and marked Attachment 2.

6. Defendant has served upon Plaintiff a copy of this Notice of Removal, with all attachments, and has filed a true copy of this Notice of Removal, with all attachments, with the Clerk of the Rush Circuit Court, as shown by the Certificate of Compliance with Notice of Removal Procedures filed contemporaneously with this Notice of Removal.

WHEREFORE Defendant Fraley & Schilling, Inc. prays that this Court accept this Notice of Removal, that it assume jurisdiction over this action, and for all other relief proper in the premises.

Respectfully submitted,

s/ Byron L. Myers

Byron L. Myers

Attorney No. 9405-49

ATTORNEY FOR DEFENDANT

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been deposited in the U.S. mail, first class postage prepaid, on the 6th day of October, 2014, addressed to:

David M. Lutz
David M. Lutz LLC
4203 W. Jefferson Blvd.
Fort Wayne, IN 46804

s/ Byron L. Myers
Byron L. Myers

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